

REMARKS

Claim Status

Claim 23 remains pending in the application. Claim 23 has been amended to recite 3.3 as the lower limit of the beverage's pH range. Basis is in Examples 1 and 2 at page 22.

Rejection Under 35 USC 103

Claim 23 is rejected under 35 USC 103(a) as being unpatentable over the sole reference to Chang *et al.* (US 5,417,994).

Chang '994 is silent on the issue of dental erosion and its treatment in the manner of the present invention. Instead, '994 relates solely to microbial stability of the disclosed beverage compositions.

Importantly, Chang '994 requires a maximum pH limit of 2.7. See column 3, lines 12 and 67. Since the pH scale is logarithmic, the acidity of Chang's compositions is well outside the pH herein and is not suggestive thereof. This is especially true herein, since the purpose of '994 is to secure microbial stability and there is no suggestion of the erosion treatment of the present claim.

In view of the contrary teachings of '994, it is submitted that the §103 rejection should be withdrawn.

CONCLUSION

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference. In view of the foregoing, entry of the amendment presented herein, reconsideration of this application and allowance of the pending claim are respectfully requested.

Respectfully submitted,

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